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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. [redacted] 40

TERRITORY OF ALASKA,

Petitioner,

vs.

AMERICAN CAN COMPANY, FIDALGO ISLAND PACKING COMPANY, LIBBY, MCNEILL & LIBBY, INC., NAKAT PACKING COMPANY, NEW ENGLAND FISH CO., P. E. HARRIS COMPANY, INC., PACIFIC & ARCTIC RAILWAY & NAVIGATION CO., and OCEANIC FISHERIES CO.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

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Subject Index

Table of Authorities Cited

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for the Ninth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on June 27, 1957.

CITATIONS TO OPINIONS BELOW.

The opinion of the District Court is found in the printed transcript of record used in the Court below, at pp. 56-57, and is reported in 137 F.Supp. 181. The opinion of the Circuit Court of Appeals, Ninth Circuit, is printed in the Appendix hereto, *infra*, at pp. 29-48, and is reported in 246 F.2d 493.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on June 27, 1957 (R. 93). A timely petition for rehearing filed on July 25, 1957 (R. 94) was denied on December 4, 1957 (R. 94). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED.

The United States Court of Appeals for the Ninth Circuit has construed Chapter 22, Session Laws of Alaska 1953, which repealed the Alaska Property Tax Act, as forgiving the liability of delinquent taxpayers for taxes accruing under that act.

Whether the District Court was correct in excluding evidence of the original House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature.

Whether the Court below correctly interpreted Section 2 of Chapter 22, Session Laws of Alaska 1953, as a special saving clause which overrides the Gen-

eral Saving Statute of Alaska, Section 19-1-1, Alaska Compiled Laws Annotated 1949.

Whether the special saving clause, if the Court below is correct in construing it as exempting delinquent taxpayers from liability, is valid under the Due Process and the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and Section 9 of Alaska's Organic Act, 48 U.S.C. 78; § 48-1-1, ACLA 1949.

STATUTES INVOLVED.

The statutory provisions involved are the following:

U. S. Const. amend. V:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U. S. Const. amend. XIV, § 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

48 U.S.C. Sec. 23, Sec. 2-1-1, ACLA 1949:

"Constitution and laws of the United States extended: Continuation of existing laws. The Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States. All the laws of the United States passed prior to August 24, 1912, establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by Act of Congress; except as herein provided all laws in force in Alaska prior to that date shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature."

48 U.S.C. Sec. 78, Sec. 48-1-1, ACLA 1949:

"Requirement of uniform taxes: Assessments. All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, except that unpatented mining claims and nonproducing patented mining claims, which are also unimproved, may be valued at the price paid the United States

therefor, or at a flat rate fixed by the legislature, but if the surface ground is used for other than mining purposes, and has a separate and independent value for such other purposes, or if there are improvements or machinery or other property thereon of such a character as to be deemed a part of the realty, then the same shall be taxed according to the true and full value thereof."

Section 19-1-1, ACLA 1949:

"Effect of repeals or amendments. The repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made."

Chapter 10, Session Laws of Alaska 1949, the Alaska Property Tax Act, appears in the Appendix, *infra*, pp. 1-28.

Chapter 22, Session Laws of Alaska 1953:

"An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; excepting from repeal certain taxes and tax exemptions; and declaring an emergency.

"Be it enacted by the Legislature of the Territory of Alaska:

"Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.

"Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in subsection (a) in this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.

"Section 3. An emergency is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval."

STATEMENT.

1. In 1949, the Alaska Territorial Legislature enacted the first general property tax act of the Territory, which was Chapter 10, Session Laws of Alaska, 1949. The validity of the act was challenged in ex-

tensive litigation, with the act being finally upheld as constitutional.[1]

During the pendency of these litigations, more than 8,689 taxpayers, among whom the appellees are numbered, became delinquent in excess of $1,290,000.00, while at the same time, 11,504 people voluntarily paid their taxes in excess of $400,000.00.

2. In 1953, the subject tax statute was repealed by Chapter 22, Session Laws of Alaska, 1953.

3. Between April and May of 1955, the appellant filed eight separate Complaints, seeking to recover a total amount of over One Hundred Seventy-five Thousand Dollars ($175,000.00) in taxes, interests and penalties which had accrued and were due and owing by the appellees for the years 1949, 1950, 1951 and 1952. (R. 3, 8, 14, 19, 25, 29, 33 and 37.)

4. On either the last day or the day before the last day within which to answer appellant's Complaints, each appellee filed a separate, identical Motion to Dismiss, alleging:

> "(1) That the Complaint does not state a claim against the defendant upon which relief can be granted.
>
> "(2) That the action was not brought within the time required by law." (R. 6, 11, 17, 22, 28, 32, 36 and 40.)

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[1] *Hess v. Mullaney*, 91 F.Supp. 139, reversed in *Mullaney v. Hess*, 189 F.2d 417; *Hess v. Mullaney*, 102 F.Supp. 430, sustained in *Hess v. Mullaney*, 213 F.2d 635.

5. On May 5, 1955, the appellant filed a counter motion against four of the appellees requesting that the United States District Judge enter an order (1) striking the Motion to Dismiss filed by the defendant, and (2) requiring the defendant to answer the complaint within ten days thereafter. Appellant listed the following reasons for its motion:

> 1. That defendant's Motion to Dismiss fails to state the grounds therefore with particularity as is required by Rule 7(b), Federal Rules of Civil Procedure.
>
> 2. That the Statute of Limitations may not be raised on a motion to dismiss the complaint.
>
> 3. That the Motion to Dismiss is a dilatory pleading. (R. 7, 12, 18 and 23.)

At the hearing on appellant's Motion to Strike, the second ground was abandoned in view of *Suckow Borax Mines Consolidated, Inc. v. Borax Consolidated, Limited,* 185 F.2d 196, 202 (9th Cir.). (R. 41.)

Appellees' principal argument in answer to appellant's contention that Rule 7(b) had not been complied with was that their Motion to Dismiss conformed to Form 19 of the Appendix Forms to the Federal Rules of Civil Procedure and was therefore stated with the sufficient particularity. The late Honorable George W. Folta sustained appellees' argument and denied appellant's Motion to Strike.

6. The appellees' motions to dismiss were consolidated for hearing (R. 25, 44), and the Court convened on October 28, 1955, and heard arguments thereon (R. 46).

7. On January 21, 1956, the District Court granted appellees' Motion to Dismiss the Complaint (R. 69) for the reasons stated in its opinion (R. 56).

8. On February 7, 1956, appellant filed Notice of Appeal from the Order of Dismissal to the United States Court of Appeals for the Ninth Circuit, and also its Statement of Points upon which appellant intended to rely. (R. 70-73.)

9. On June 27, 1957, the decision of the District Court was affirmed by the United States Court of Appeals for the Ninth Circuit by a divided Court. (R. 79-92.) The majority stated that four questions were presented by the appellant (R. 82) and that the third question determined the issue. That question was whether the language in Section 2 of Chapter 22, Session Laws of Alaska 1953, which repealed the 1949 property tax act, constituted a special saving clause which nullified the Alaska General Saving Statute, which is Section 19-1-1, Alaska Compiled Laws Annotated, 1949. The majority held such was the case and that no liability against the appellees survived the repeal. It was also held that the District Court was correct in excluding from evidence House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature on the basis of *Trailmobile Company v. Whirls*, 1947, 331 U.S. 40, 60-61. (R. 89.) The Court did not decide questions number one and number two (R. 82) because they stated that the foregoing answers were determinative of the issue. Judge Healy, in dissenting (R. 91), argued that the excluded Bills were material to show

legislative intent and, further, that the special saving clause and the Alaska General Saving Statute could be read in *pari materia*. Judge Healy also pointed out that the application of a general saving clause must be negatived by the *express* terms or *clear* implication of a particular repealing act.

10. The appellant, the Territory of Alaska, filed a timely petition for rehearing on July 25, 1957, which was denied on December 4, 1957 (R. 94). In this petition, which has been certified as a portion of the record and filed in this Court, your appellant injected the issue of constitutionality which of necessity arose from the holding of the majority of the Court below. The present posture of the case indicates that, as the Court of Appeals has now interpreted the repealing act, it is unconstitutional since it violates the Organic Act of the Territory of Alaska and the Fifth and Fourteenth Amendments of the United States Constitution.

REASONS FOR GRANTING WRIT.

1. The United States Court of Appeals for the Ninth Circuit has construed a Territorial statute in such a manner as to produce a result which is in discord with the accepted and usual course of judicial proceedings and which is in universal conflict with constructions of taxation limiting provisions of both Federal and State constitutions.

The interpretation of the Court below makes Chapter 22 an unconstitutional act. The act, as inter-

preted, now constitutes a denial of due process and of equal protection of the laws under the Fifth and Fourteenth Amendments to the Federal Constitution. It further violates a provision of the Organic Act of the Territory of Alaska, 48 U.S.C. 78; § 48-1-1, ACLA 1949. Section 9 of the Organic Act provides:

> "All taxes shall be uniform on the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, . . ."

Your appellant states that there has never arisen a case, wherein the facts are fairly similar, in which the courts have permitted such a statute as Chapter 22 is now construed to be, to stand under the above-noted Federal Constitutional provisions or under State Constitutional restrictions similar to Section 9 above. The effect of this construction is to permit a legislature to tax a class whose only distinction from tax exempted citizens likewise situated is that the former class is willing to pay under a valid law and is not delinquent. Such a construction makes the act unconstitutional notwithstanding that the statute in question is a repealing act which *forgives* the tax as to one class, rather than a taxing statute which *exempts* a particular class. The effect is the same and Constitutional limitations, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit and cannot be evaded by any legislation which seeks to accomplish indirectly that which cannot be done directly. *Macallen Co. v. Commonwealth of Mass.*, 279 U.S. 620 (1929).

Your appellant earnestly agrees with the proposition expressed by the Supreme Court of Florida in *Simpson, County Tax Collector v. Warren,* 106 Fla. 688, 143 So. 602, 603:

> "Where a statute which provides for the collection of a particular tax is valid, and taxes from some have been collected under it, the Legislature is without power to unconstitutionally discriminate against, and deny the equal protection of the laws to the class of taxpayers who have already paid such tax while the statute was in force, by arbitrarily remitting or wiping out by repeal of the statute or otherwise the liability of those who have by their delinquency evaded or postponed payment for the time being."

and, further, with that in *State v. Butts,* 111 Fla. 630, 149 So. 746, 755:

> "It cannot well be denied that, when the proper tax officers have legally placed upon each individual his share of the public burden of taxation, the Legislature of the state has no right to lift it from him to the prejudice of other taxpayers, or to the detriment of the public credit, either in the form of an abatement before, or in the form of a gift after, collection, or by a return to the taxpayer unburden his forfeited property, for this being done, a deficiency results in the public revenues which must be supplied by the imposition of additional tax assessments and levies upon the nonfavored class, thereby violating the fundamental constitutional requirement of all taxation, which is that it shall bear equally upon all, with special privileges to none."

Similar views are found in the following:

Shepard, et al. v. Hidalgo County, et al., 83 S.W. 2d 649, 653;

Lincoln Mtg. and Trust Co. v. Davis, 76 Kan. 639, 92 P. 707;

State, ex rel. Coe v. Fyler, 48 Conn. 145;

State v. Armstrong, 17 Utah 166, 53 P. 981.

In both *Richey v. Wells*, 123 Fla. 284, 166 So. 817, and *State, ex rel. Kain v. Fischl, County Treasurer*, 94 Mont. 92, 20 P.2d 1057 (later overruled on different grounds), the respective courts declared that the selection and classifying of delinquent taxpayers as beneficiaries of special tax concessions without the same benefits being equivalently available to nondelinquent taxpayers violated the Federal Constitution.

More often remissions of taxes are denied under various *state* constitutional provisions such as requirements of uniform taxation and equal protection: *Huntington v. Worthen* and *Little Rock and Fort Smith Railway v. Worthen*, 120 U.S. 97 (1887); *Thompson v. Auditor General*, 261 Mich. 624, 247 N.W. 360; *Ranger Realty Co. v. Miller*, 102 Fla. 378, 136 So. 546; *State, ex rel. Matteson v. Luecke*, 194 Minn. 246, 260 N.W. 206; *State, ex rel. Hustetter v. Hunt*, 132 Ohio St. 568, 9 N.E.2d 676; *Lucie Estates v. Ashley*, 105 Fla. 534, 141 So. 738; *State, ex rel. Coe v. Fyler, supra; State v. Armstrong, supra.*

Generally, where the remission of accrued taxes is permitted, it is permitted because the remission is uniform upon all taxpayers, *Clements v. Peerless*

Woolen Mills, 197 Ga. 296, 29 S.E.2d 175, or that uncollectible or doubtful claims can be compromised, *Opinion of the Justices, No. 89*, 251 Ala. 96, 36 So. 2d 480, or that the classification is reasonable, *State, ex rel. Anderson v. Rayner*, 60 Idaho 706, 96 P.2d 244; or that a remission of penalties and interst on delinquent taxes is permissible because the situation is distinguished from the case of remission of the tax itself, *State, ex rel. Sparling v. Hitsman*, 99 Mont. 521; 44 P.2d 747, or because the goal sought was to return land which would bring less than the accumulated taxes and penalties at a forced sale to the tax rolls by permitting the sale of certificates at less than such value, and it was not shown that the taxpayer was favored in the sale of the certificates, *Ranger Realty Co. v. Miller, supra*, or that the nondelinquent taxpayers are to receive credits for *ad valorem* special assessments paid by them but which are relieved as to delinquent taxpayers, *San Bernardino County v. Way*, 18 Cal.2d 647, 117 P.2d 354, and for other reasons distinguishable from the instant remission.

This Court, in *Illinois Central Railroad Co. v. Commonwealth of Kentucky*, 218 U.S. 551, 563 (1910), in denying that an assessment upon taxpayer violated the equal protection clause, stated:

> "It does not satisfactorily appear that other railroad corporations were not assessed in the same way or at the same time, or, assuming that they were so assessed, that they were not liable to pay the taxes accordingly."

The clear implication was that, had other taxpayers been relieved of payment, it would violate due process of law to tax taxpayers similarly situated.

Your appellant thus urges that the Court below so departed from the accepted course of judicial proceedings that review is necessary in this Court to determine the constitutional issues involved in accordance with the overwhelming precedent.

Your appellant further urges that the showing of an unconstitutional construction of the repealing act raises the well-established principle that where a statute is open to more than one construction, one of which would render it void or of doubtful validity, and the other is reasonable and in harmony with the constitution, then the one which sustains its validity will be adopted, *Miller v. Commonwealth*, 172 Va. 639, 2 S.E.2d 343; *In re Seizure of Seven Barrels of Wine*, 79 Fla. 2, 83 So. 627, 632. This rule, together with the arguments urged below, and which arguments are hereby re-urged, compels a construction of the statute which does not remit the delinquent taxes.

If such a construction is not to be found, then, in the alternative, and in the interests of justice to those who have voluntarily paid the taxes at a time the assessment was valid, the equities demand a test of the validity of the repeal upon constitutional grounds.

2. The amount involved, while not of enormous proportions in comparison to tax sums levied by larger political entities of the United States, is of truly magnified importance in an area less providently

blessed with taxable values than others, and is sorely needed to maintain the high standard of government the Territory has set for itself in preparing to accept the full responsibility of government from the Federal Government. The result of such a construction of the repeal not only hampers such ends but disproportionately shifts the burden of maintenance of government to those who have voluntarily paid the valid tax pursuant to law. The number of people involved comprises a large percentage of the permanent residents of the Territory of Alaska. Of these, 11,504 have paid in excess of $400,000.00 in taxes, and over 8,689 delinquent taxpayers are held by the Court of Appeals for the Ninth Circuit to have been forgiven over $1,290,000.00 in taxes.

Further, the question of the applicability of the due process and equal protection clauses of the Fourteenth Amendment to tax remissions and refunds, over and above the varying determinations of state courts under varying state constitutional provisions calling for uniformity or prohibiting extinguishment of state obligations, is of wide importance as well as of application. Settlement of the limitations, as to the power of the state legislature to remit accrued and delinquent taxes in the face of enormous and numerous payments by nondelinquent taxpayers, will guide future legislatures, not only of the Territory of Alaska but of all legislative bodies in the several states.

CONCLUSION.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Dated, Juneau, Alaska,
February 21, 1958.

Respectfully submitted,

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(Appendices A, B and B(1) Follow.)

CHAPTER 10, SESSION LAWS OF ALASKA, 1949.

Section 1. TITLE. This Act may be cited as the "Alaska Property Tax Act".

Section 2. DEFINITIONS. As used in this Act, the following words and terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) The word "assessor" means an authorized representative of a Board of Assessment and Equalization designated to perform the duties of making assessments in a judicial division.

(b) The word "board" means a Board of Assessment and Equalization.

(c) The word "Collector" means the Tax Commissioner or his authorized representative, employee or agent designated by him.

(d) The word "division" means judicial division as understood and recognized in Alaska.

(e) The word "improvements" includes all buildings, structures, fences and additions erected upon or affixed to the land, whether or not the title of the land has been acquired by any particular person.

(f) The word "include", when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The word "person" means and includes any individual, trustee, receiver, firm, partnership, joint

venture, syndicate, association, corporation, trust, or any other group acting as a unit.

(h) The words "personalty" or "personal property" shall mean all machinery, equipment, household goods, and other tangible personal property which is located on or used in connection with particular land, or owned, possessed or used independently of any particular land.

(i) The word "property" means and includes real property, improvements, and personalty, as herein defined.

(j) The words "real property" or "land" mean any estate or interest therein, including permit or license rights, and improvements thereon, and shall include all timber or patented lands.

(k) The words "Tax Commissioner" means the Tax Commissioner of the Territory of Alaska.

(l) The words "tax lien" embrace liens for penalties, interest and costs as well as for unpaid taxes.

(m) The word "Territory" means the Territory of Alaska.

Section 3. LEVY OF TAX. For the calendar year of 1949, and each calendar year thereafter there is hereby levied, and there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory at the rate of one per centum of the true and full value thereof. For the purposes of this section the assessed value of unimproved, unpatented mining claims which

are not producing, and nonproducing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at $500.00 per each 20 acres or fraction of each such claim, except that if the surface ground of any such claim is used for other than mining purposes and has a separate and independent value for such other purposes, the valuation as pertains to such nonmining uses and of improvements incidental to such uses shall be according to the full and true value thereof.

Section 4. TAX UPON PROPERTY WITHIN INCORPORATED CITIES AND DISTRICTS. The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city and town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district, by and at the expense of the municipalities and districts prorated proportionately between each, provided that amounts levied but which prove uncollectible, and the cost of foreclosure on delinquent accounts shall be borne by the city or school and public utility district.

All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows:

(a) As to cities which are not a part of an independent school district the municipal tax collection

authority shall turn the amount of tax collected over to the city treasurer.

(b) As to incorporated school districts the tax collectors thereof shall turn the amount of tax collected over to the district school board.

(c) As to cities which are part of an independent school district the amount of taxes collected shall be turned over to the city treasurer. The city treasurer is hereby authorized and empowered to turn over to the school board such part of the funds collected as may be determined by the city council from time to time necessary to efficiently carry on school functions in said school district. Such cities may assess and collect an additional tax on real and personal property situate in the said cities not to exceed the amount allowed by law, which tax shall be assessed and collected at the same time and in the same manner as the tax provided in Section 3 of this Act, which said funds shall be used by said cities for general municipal purposes. Regarding that part of independent school districts outside of town bounds, the tax collection authority therein shall turn the taxes collected over to the district school board; provided that the millage levy for school purposes shall be uniform within incorporated school districts whether said district includes another incorporated municipality or not and any unused remainder up to the maximum levy hereunder shall revert to the Territorial Treasurer except that portion collected within any incorporated municipality within the boundary of such school district in which case such remainder,

unused for school purposes, shall revert to the treasury of the incorporated municipality in which it may be collected.

(d) Taxes collected hereunder within a public utility district shall be handled in a like manner to those collected in cities or other incorporated municipalities, including collection costs, remissions and school millage levy provisions as set forth herein.

(e) In all cases where such local units are to receive such tax collections, the local tax collection authority shall, upon delivery of the money as above set forth, obtain a receipt in duplicate therefor and forward the duplicate thereof to the Tax Commissioner. The time or times to be set for payment on account of such collections shall be prescribed by the Tax Commissioner. Such other accounting as may be indicated shall be made to the Tax Commissioner at such times and in such manner as may be prescribed by him.

The tax money so collected which remains after remissions have been made shall be transmitted to the Tax Commissioner at such intervals and in such manner as he shall direct, for deposit with the Treasurer, to be covered into the general fund of the Territory.

Section 5. TAX ON PROPERTY OUTSIDE INCORPORATED CITIES AND SCHOOL DISTRICTS. The tax levied under the provisions of Section 3 upon property outside the limits of an incorporated city, independent school district, or in-

corporated school district or public utility district in the Territory shall be assessed, collected and enforced as provided in this Act.

Section 6. EXEMPTIONS.

(a) Property shall be exempt from taxation hereunder when used exclusively for educational, religious or charitable purposes.

(b) The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangement with the Rural Electrification Administration, shall be exempt hereunder.

(c) The personal property of any person to the value of $200.00 shall be exempt hereunder.

(d) The property of any organization not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organization, and all monies on deposit belonging to such organization shall be exempt hereunder, except any such property which produces rentals or profits for such organization.

(e) The laws exempting certain property from levy and sale on execution shall not apply to taxes levied hereunder or to the collection thereof.

(f) New industrial, commercial and business construction shall be exempt during the period of construction and until the plants or buildings are occupied or operated, but in no case shall this exemption

exceed three taxable years from the time of beginning of construction. Modifications and repairs to existing structures shall not be considered new construction under this provision.

(g) All homesteads upon which entry has been made in accordance with the land laws of the United States shall be exempt from the date of entry until one year after the date upon which patent shall have been granted and final title acquired. Such exemption shall include all improvements upon such homesteads pertaining to residential or agricultural purposes.

(h) INDUSTRIAL INCENTIVE CLAUSE: The Tax Commissioner is authorized to grant incentive exemptions hereunder in the manner and to the extent hereinafter set forth:

(1) An exemption of one-half of the tax otherwise imposed hereunder, or such other lesser fraction thereof as the Tax Commissioner may deem to be a necessary and proper encouragement to new industry as hereinafter defined, for such period not exceeding 10 taxable years from the date production is commenced, upon new plants and buildings and other installations, real estate and equipment, as are constructed and procured by new industrial enterprises, as hereinafter defined, to manufacture or process products which constitute industry new to Alaska with resultant establishment of new payrolls in Alaska.

The terms "new industry" or "new industrial enterprises" as used herein shall mean undertakings

for the purpose of manufacturing or processing products not manufactured or processed in Alaska on the effective date hereof and for which plants have not already been established in Alaska.

(2) The Tax Commissioner shall establish and promulgate general standards and rules conformable to this Act for determining the eligibility of applicants for exemptions hereunder, and the extent to which exemptions for such applicants respectively are to be granted, including such factors as: permanence of the industry involved; the amount of its capital investment; whether it is a seasonal or continuous operation; whether it will likely be marginal because of distance from principal markets; transportation costs and differential in cost of production in Alaska as compared to cost of productions elsewhere; the number of resident Alaskan workmen who will be given employment; and other pertinent factors, related to improving the economy of the Territory of Alaska. He shall also consider in each case the recommendation of the Divisional Board of Assessment of the division in which the new industry is proposed to be established, which recommendation shall be obtained by the applicant in advance of the application and attached thereto. After all such factors are taken into consideration, the decision of the Tax Commissioner shall be rendered, subject, however, to final approval of the Divisional Board of Assessment. If after studying the Tax Commissioner's findings and decisions, the said Board, acting by majority of its members, is unable to agree with said

decision, it shall, after reasonable notice to the Tax Commissioner and the affected new industry, hold a hearing and make the decision, which shall be final, except that when such exemption decision expires, the position of the new industry may be re-evaluated and extension granted within the maximum limits allowed hereunder, in the same manner as provided for the granting of the original exemption.

(3) All exemptions granted hereunder shall be negotiated and consummated prior to the initial commencement of production by the applicant.

(4) Exemptions granted by the Tax Commissioner hereunder shall be applicable within or without municipalities, school districts or public utility districts.

Section 7. RETURNS.

(a) On or before the 15th day of July in the year 1949, and on or before the 15th day of March in each year thereafter, every person shall submit in duplicate to the assessor of the judicial division, a return of his property, and of the property held or controlled by him in a representative capacity, in the manner prescribed in this Act, which return shall be based on values existing as of January 1 in the same year.

(b) In every case the person making the return shall state an address to which all notices required to be given to him under this Act may be mailed or delivered.

(c) The return shall show the nature, quantity, amount and value of the property, the place where

the property is situated, and said return shall be in such form as the Tax Commissioner may prescribe, and shall be signed and verified by the person liable, or his or its authorized agent or representative.

Section 8. ADDITIONAL RETURNS. The assessor may, by notice in writing to any person by whom a return has been made require from him a further return containing additional details and more explicit particulars, and upon receipt of the notice that person shall comply fully with its requirements within thirty days after its receipt by him.

Section 9. POWER TO MAKE EXAMINATIONS.

(a) An assessor shall not be bound to accept as correct the return made by any person, but if he thinks it necessary or expedient, or if he suspects that a person who has not made a return is liable to assessment, he shall make an independent investigation as to the property of that person, and may make his own valuation and assessment of the taxable amount thereof, which will be prima facie good and sufficient for all legal purposes.

(b) For the purpose of such examination, the assessor, personally or by any deputy designated by him, may enter upon any premises and may examine any property thereon, and shall have access to and may examine all property records involved, and such person shall, upon request, furnish to the assessor or deputy every facility and assistance for the purposes of such examination.

(c) An assessor may in any case examine a person on oath or otherwise, and upon request of the assessor, the person shall attend and submit himself to examination by the assessor.

Section 10. INSPECTION OF RETURN. No return made by any person under this Act shall be open for inspection by any person except officers authorized by law to administer this Act, or upon an official investigation or proceedings in court, and any Territorial employee who violates said restriction by communicating any information obtained under the provisions of this Act, except such information as is required by law to be shown on the assessment rolls, or allows any person not legally entitled thereto to inspect or have access to any return made under the provisions of this Act shall be guilty of a misdemeanor punishable under the penalty clause of this Act, and shall be discharged from his office or employment and be ineligible to hold any public office or employment for the Territory for a period of two years thereafter.

Section 11. VALUATION. Property shall be assessed at its full and true value in money, as of January 1 of the assessment year. In determining the full and true value of property in money, the person making the return, or the assessor, as the case may be, shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the property would sell at auction, or at a forced sale, either separately or in the aggregate

with all of the property in the taxing district, but he shall value the property at such sum as he believes the same to be fairly worth in money at the time of assessment. The true value of property shall be that value at which the property would generally be taken in payment of a just debt from a solvent debtor.

Section 12. ASSESSMENT. Every person shall be assessed and taxed annually on his property in the division in which the property is situated, and where any parcel of land is situated partly in one division and partly in another or partly within a municipality or school district and partly elsewhere, the assessment in respect of that parcel shall be made in the division or district within which the greater part of the property is situated. Real property and personalty shall be separately assessed.

Section 13. TO WHOM ASSESSED.

(a) Subject to subsection (b) and (c) of this section, property shall be assessed and taxed in the name of the owner or claimant or where the property is owned, occupied or claimed by two or more persons, it shall be assessed and taxed in the names of the owners, occupiers or claimants jointly.

(b) Where a verified statement is furnished showing that property has become the subject of a contract of sale or been leased by the owner to another person, the name of the other person shall be noted on the assessment roll and like notice of the assessment shall be sent to him as to the owner, in which case the taxes

assessed in respect of the property may be received either from the owner or from the purchaser or tenant, or from any optionee, prospective distributee, purchaser or encumbrancer who desires to safeguard the title to the property.

(c) Land of the United States or the Territory which is held under any mining location, lease, license, agreement for sale, accepted application for purchase, or otherwise, shall be assessed and taxed in the name of the occupier according to the value of his interest therein (except as above modified in this Act with respect to certain mining claims); but no assessment or taxation in respect of land so held or occupied shall in any way affect the rights of the United States in the land.

(d) Where the property assessed is owned by two or more persons in undivided shares, each owner shall be assessed on the undivided interest at the proportion of the assessed value of the property that his undivided interest bears to the whole.

Section 14. CONTENT OF ASSESSMENT ROLL.

(a) The assessor of each division shall prepare an annual assessment roll for each division covering property outside of municipalities and school districts and public utility districts, after consideration of all returns made to him pursuant to this Act, and after careful inquiry from such sources as he may deem reliable. On the roll he shall enter the following particulars:

(1) the names and last known addresses of all persons with property liable to assessment and taxation;

(2) a description of all taxable property;

(3) the assessed value, quantity, or amount of said property and the taxes thereon;

(4) the arrears of taxes owing by any persons; and,

(5) any other information that may be required by the Tax Commissioner.

(b) It shall be a sufficient description of any property for the purposes of this Act, if there is entered on the assessment roll the best available short description of the property.

Section 15. ASSESSMENT NOTICE.

(a) The assessor, before completion of the assessment roll, shall give to every person named thereon a notice of assessment, showing the valuation and assessment of his property and the amount of taxes thereon, in such form as the Tax Commissioner may prescribe. At least 60 days must be allowed from date of such mailing within which to appeal to the Board against the assessment. He shall enter on the roll opposite the name of each person the date of giving the assessment notice which entry shall be prima facie evidence of the giving of the notice. On the back of each assessment notice shall be printed a brief summary for the information of the taxpayer, of the dates when the taxes are payable, delinquent, and subject to interest, dates when the Board will sit for equalization purposes, and any other particular specified by the Tax Commissioner.

(b) The assessment notice shall be directed to the person to whom it is to be given, and shall be sufficiently given if it is mailed by first class mail addressed to, or is delivered at, his address as last known to the assessor; or, if the address is not known to the assessor, the notice may be mailed addressed to the person at the postoffice nearest to the place where the property is situated. The date on which the notice is so mailed or is so delivered for all purposes of this Act shall be deemed to be the date on which the notice is given.

Section 16. COMPLETION OF ASSESSMENT ROLL. The assessor shall complete the annual assessment roll for the year 1949 on or before the 1st day of September and for each year thereafter on or before the 1st day of July of that year, which shall be based on values of January 1st immediately preceding, and shall certify the same by attaching thereto a certificate in a form to be prescribed by the Tax Commissioner. Such supplement assessment rolls shall be prepared and certified as may be deemed necessary or expedient.

Section 17. EFFECT OF ASSESSMENT ROLL. All taxes to be levied or collected under this Act shall, except as otherwise provided, be calculated, levied and collected upon the assessments entered in the assessment rolls and certified by the respective assessors as correct, subject to the taxpayers' rights of appeal and to the corrections and amendments made in the rolls pursuant to this Act.

Section 18. PROVISIONS APPLICABLE TO SUPPLEMENTARY ROLLS. All the duties imposed upon the assessor with respect to the annual assessment roll and all the provisions of this Act relating to assessment rolls shall, so far as applicable, apply to suplementary assessment rolls.

Section 19. CORRECTION OF ERRORS BY ASSESSOR. Any assessor may correct any error, omission or invalidity made or arising in the preparation of the assessment roll at any time before the sitting of the Board. It shall be the duty of every person receiving a notice of assessment to advise the assessor of any error, omission or invalidity he may have observed in the assessment of his property, in order that the assessor may correct the same.

Section 20. TRANSMISSION OF ROLL TO THE TAX COMMISSIONER.

(a) A copy of all assessment rolls shall be certified and transmitted to the Tax Commissioner at Juneau not later than one month after the completion of same unless the time for transmission is extended by the Tax Commissioner. This shall be in addition to deposit of the assessment roll for retention in the division as required in Section 22.

(b) All corrections and amendments made in the roll pursuant to this Act or the decisions of the Board or the courts, and which are not shown on the assessment roll deposited with the collector or upon the copy transmitted to the Tax Commissioner at Juneau, shall be forthwith reported to the collector by the assessor.

Section 21: VALIDITY OF ASSESSMENT ROLLS. Every assessment roll as completed and certified by the assessor, and as corrected and amended by him from time to time in conformity with this Act and the decisions of the Board shall, except insofar as the same may be further amended on appeal to the court, be valid and binding on all persons, notwithstanding any defect, error, omission or invalidity existing in the assessment roll or any part thereof, and notwithstanding any proceedings pertaining thereto.

Section 22. DEPOSIT OF ROLL WITH COLLECTOR. Upon a completed assessment roll being amended by the assessor in conformity with the decisions of his Board, the assessor shall deliver the roll to the collector, for retention in the division to which it applies, and the roll shall be open during office hours to the inspection of all taxpayers of the division.

Section 23. SITTINGS AND RECORDS OF BOARD. For the purpose of scrutinizing the assessment roll and its supplements, and taking corrective action thereon, or for hearing appeals in respect of any assessment rolls, or from any assessment made under this Act, the Board in each division shall sit and adjourn from time to time as its business may require, and shall record its proceedings and decisions. During all periods when a Board is not in session, its records and decisions shall be kept by the assessor.

Section 24. NOTICES BY BOARD.

(a) Where the name of any person is ordered by the Board to be entered on the assessment roll, by way of addition or substitution, for the purpose of assessment, the Board shall cause notice thereof to be mailed by the assessor to that person or his agent in like manner as provided in Section 15, giving him at least 60 days from the date of such mailing within which to appeal to the Board against the assessment.

(b) Whenever it appears to the Board that there are overcharges or errors or invalidities in the assessment roll, or in any of the proceedings leading up to or subsequent to the completion of the roll, and there is no appeal before the Board in which the same may be dealt with, the Board may notify parties affected with the view of hearing them.

Section 25. APPEAL BY PERSON ASSESSED.

(a) Any person whose name appears on the assessment roll for any division or who is assessed in any district, may appeal to the Board with respect to any alleged overcharge, error, omission or neglect of the assessor.

(b) Notice of appeal, in writing, shall be filed with the Board within 60 days after the date on which the assessor's notice of assessment was given to the person appealing. Such notice must contain a certification that a true copy thereof was mailed or delivered to the assessor. If notice of appeal is not given within that period, right of appeal shall cease,

unless it is shown to the satisfaction of the Board that the taxpayer was unable to appeal within the time so limited.

(c) A copy of the notice of appeal must be sent to the assessor as above indicated.

Section 26. APPEAL RECORD. Upon receipt of the notice of appeal, the assessor shall make a record of the same in such form as the Tax Commissioner may direct, which record shall contain all the information shown on the assessment roll in respect of the subject matter of the appeal, and the assessor shall place the same before the Board from time to time as may be required by the Board.

Section 27. NOTICE OF HEARING. Not less than 30 days before the sittings at which the appeal is to be heard, the Board shall cause a notice to be mailed by the assessor to the person by whom the notice of appeal was given, and to every other person in respect of whom the appeal is taken, to their respective addresses as last known to the assessor. The form of such notice shall be prescribed by the Tax Commissioner.

Section 28. HEARING OF APPEAL.

(a) At the time appointed for the hearing of the appeal, the Board shall hear the appellant, the assessor, other parties to the appeal and their witnesses, and consider the testimony and evidence adduced, and shall determine the matters in question on the merits and render its decision accordingly.

(b) If any party to whom notice was mailed as above set forth fail to appear, the Board may proceed with the hearing in his absence.

(c) The burden of proof in all cases shall be upon the party appealing.

Section 29. ENTRY OF DECISIONS. The Board shall from time to time enter in the appeal record its decisions upon appeals brought before it, and shall certify to the same. The assessor, upon receipt of the appeal record, and subject in every case to any appeal taken to the courts, shall enter in the assessment roll such amendments as may be necessary to give effect to the decisions of the Board.

Section 30. COLLECTION UNAFFECTED BY APPEAL. Neither the giving of a notice of appeal by any taxpayer, nor any delay in the hearing of the appeal by the Board shall in any way affect the due date, the delinquency date, the interest, or any liability for payment provided by this Act in respect of any tax which is the subject matter of the appeal. In the event of the tax being set aside or reduced by the Board on appeal, the Tax Commissioner shall refund to the taxpayer the amount of the tax or excess tax paid by him, and of any interest imposed and paid on any such tax or excess.

Section 31. APPEAL TO COURT. Any person feeling aggrieved by any order of the Board shall have the right of appeal on a de novo basis to the District Court for the Territory of Alaska in the division in which the matter is pending. Such appeal

shall be pursued as nearly as may be in accordance with the procedure prescribed in Sections 68-9-4 to 68-9-14 inclusive, Alaska Compiled Laws Annotated 1949, governing appeals from a Justice's Court in civil cases and the Tax Commissioner shall promulgate uniform regulations adapting the above referenced procedure for perfecting such appeals.

Section 32. TIME OF PAYMENT. Taxes for a calendar year shall be payable annually the first day of February of the ensuing year. Failure to pay on said due date shall cause the tax to become delinquent and shall subject the property assessed to the interest and penalty additions hereinafter provided. Payments of taxes may be made at any time before their due date, but no discount shall be allowed for such early payment.

Section 33. MODE OF PAYMENT. All taxes payable under this Act shall be paid in lawful money of the United States or its equivalent, at the office of the collector in the judicial division in which same are due.

Section 34. LIEN.

(a) The taxes assessed upon property, together with interest and penalty, shall be a lien thereon from and after assessment until paid, and no sale or transfer of such property shall in any way affect the lien of such taxes.

(b) Liens for taxes hereunder shall be first liens and paramount to all prior and subsequent encumbrances, alienations and descents of the property.

Section 35. INTEREST.

(a) For failure to pay taxes when due, interest inclusive of penalty at the rate of one per cent per month shall be added on the first of each month until the tax is paid or the property sold hereunder, but not to exceed the legal rate of interest in the aggregate.

(b) Where a tax becomes payable in respect to property assessed on a supplementary assessment roll, the like interest shall be added to and recovered as a part of the tax as might have been imposed if the return and the assessment had been made at the time prescribed by this Act and the tax had been duly levied and had not been paid.

Section 36. FAILURE OR REFUSAL TO COMPLY WITH ACT. Every person who, without reasonable excuse, in violation of any provision of this Act or of the regulations made thereunder—

(a) refuses or fails to make any return required to be made; or,

(b) in the making of any return, or otherwise, wilfully withholds any information necessary for ascertaining the true taxable amount of any property; or,

(c) refuses or fails to furnish to the assessor or his employee or agent any access, facility, or assistance required for the purpose of an entry on or examination of property or records; or,

(d) refuses or fails to attend or submit himself to examination on oath or otherwise by the assessor, the Board or the Tax Commissioner when duly cited so to do;—shall, in addition to penalties otherwise prescribed herein, be guilty of an offense against this Act.

Section 37. FALSE RETURNS AND RECORDS. Every person who knowingly and wilfully makes any false or deceptive statement in any return required to be made under this Act, or fraudulently omits to give therein a full and correct statement of the property of the taxpayer, or makes or keeps any false entry or record in any book of account or record required to be kept under this Act, shall be liable, on conviction, to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

Section 38. DEFACING POSTED NOTICES. Every person who, without reasonable excuse, tears down, injures or defaces any advertisement, notice or document which, under the authority of this Act or the regulations made thereunder, is posted in a public place, shall be guilty of an offense against this Act.

Section 39. PENALTY FOR OFFENSES. Every person guilty of an offense against this Act for which no other penalty is specifically provided, shall be liable, on conviction, for a first offense to a fine not exceeding Five Hundred Dollars, and for a second or subsequent offense to a fine of not less than

One Hundred Dollars and not more than One Thousand Dollars.

Section 40. LIABILITY OF CORPORATE OFFICERS, ETC. Every director, manager, secretary or other officer of a corporation or association, and every member of a partnership or syndicate, who knowingly and wilfully authorizes or permits any act, default, or refusal which would subject the organization to criminal liability hereunder, shall be likewise personally guilty of such offense.

Section 41. PROSECUTIONS. Prosecutions hereunder for imposing of fines shall be at the instance of the Tax Commissioner and be brought in the name of the Territory.

Section 42. RECOVERY OF UNPAID LIENS. On or after the first day of April of any year, the Tax Commissioner may, with the assistance of the Attorney General, file in the office of the clerk of the district court in the division in which property subject to delinquent taxes is situated, a list of all parcels affected by unpaid liens. Thereafter the Tax Commissioner shall, unless the matter be otherwise resolved, proceed to foreclosure of said liens in substantially the manner prescribed in Sections 22-2-8 to 22-2-18, both inclusive, of Alaska Compiled Laws Annotated 1949, for the foreclosure of land registration liens, and all pertinent provisions of said sections are hereby adopted as applicable hereto.

Section 43. BOARDS OF ASSESSMENT AND EQUALIZATION.

(a) There is hereby created and established for each judicial division a Board of Assessment and Equalization.

(b) Each Board shall consist of three members appointed by the Governor subject to confirmation by the majority of the members of both Houses convened in Joint Session, provided, however, that persons appointed may perform the duties of their offices until action by the ensuing Legislature is taken either confirming or rejecting such appointments.

(1) Board members shall be appointed solely on the grounds of fitness to perform the duties of the office.

(2) In the event of a vacancy on any Board, a successor shall be appointed to serve for the balance of the unexpired term.

(c) The term of each Board member shall be six years, except as hereinafter provided, but any person duly appointed and qualified shall hold office until his successor is appointed and qualified. No Board member shall be eligible to serve more than one six-year term.

(1) The terms of the members first appointed for each Board shall begin when they are appointed and qualified and shall continue for the following periods: one until March 31, 1951, one until March 31, 1953, and one until March 31, 1955.

(2) A Board member may be removed from office by the Governor after notice and opportunity for hearing, upon grounds of inefficiency, neglect of duty, malfeasance in office, but for no other cause whatever.

(d) The principal offices of the respective Boards shall be located in the following cities: for the First Judicial Division at Juneau, for the Second Judicial Division at Nome, for the Third Judicial Division at Anchorage, and for the Fourth Judicial Division at Fairbanks.

(e) The compensation of each Board member shall be $15.00 for each day actually spent in the performance of his duties, including all the time away from his place of residence in connection therewith, together with per diem and travel expense payable in accordance with vouchers issued by the Tax Commissioner.

(f) Each Board, within its judicial division, shall have the power and duty, subject to the approval of the Tax Commissioner as to all expenses of Board operations, to:——

(1) Exercise general supervision and direct the activities of assessment and equalization of property taxes;

(2) select an employee or employees or enter into contracts with qualified persons to perform the functions of appraiser and assessor; provided, that persons so appointed shall have the technical and other qualifications prescribed by the Tax Commissioner, and be engaged at rates of compensation prescribed by the Tax Commissioner;

(3) keep an accurate and complete record of all Board business, orders and processes, which records shall be open to public inspection at all reasonable times;

(4) hold hearings and conduct investigations required in the administration of the assessment provisions of this Act and hear and determine appeals involving assessment of property, at such points in their respective divisions as will serve the general convenience of the public, provided that written minutes may be kept of the testimony of witnesses without making a word by word record thereof;

(5) require attendance of witnesses and production of all necessary evidence at any hearings and administer oaths in the course of investigations conducted or hearings held pursuant to the provisions of this Act;

(6) require such searches and appraisements by the assessor as the Board sees fit;

(7) require officers and employees of incorporated cities and districts to furnish such information concerning assessment and equalization of property taxes as is deemed necessary;

(8) perform all duties specifically imposed and exercise all powers conferred upon the Board.

Section 44. TAX COMMISSIONER. The Tax Commissioner shall be the collector of taxes levied under this Act and enforce collections with the aid of such divisional collectors or other deputy collectors and personnel as he may see fit to appoint. He shall

administer all provisions of this Act except those specifically assigned to a Board or under the purview of municipal or school district authority. The Tax Commissioner shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations conformable herewith for the assessment and collection of any tax herein imposed, and shall voucher for expenditures according to law.

Section 45. SEVERABILITY CLAUSE. If any provisions of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Section 46. EMERGENCY CLAUSE. An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved February 21, 1949.

Appendix B

United States Court of Appeals for the Ninth Circuit

TERRITORY OF ALASKA, *Appellant,* vs. AMERICAN CAN COMPANY, FIDALGO ISLAND PACKING COMPANY, LIBBY, MCNEILL & LIBBY, INC., NAKAT PACKING COMPANY, NEW ENGLAND FISH CO., P. E. HARRIS COMPANY, INC., PACIFIC & ARCTIC RAILWAY & NAVIGATION CO., and OCEANIC FISHERIES CO., *Appellees.*	No. 15,070 June 27, 1957

Appeal from the District Court for the District of Alaska
Division Number One

Before HEALY, LEMMON, and FEE, Circuit Judges.

LEMMON, Circuit Judge.

In the face of the Alaska Legislature's mandate in 1953 that the Territory's Property Tax Act of 1949 "is hereby repealed," with certain specific and limited exceptions embodied in a special saving clause clearly

not applicable here, the appellant insists that it can still "collect accrued and unpaid taxes for the years 1949, 1950, 1951 and 1952."

It is urged that this saving clause merely bestowed an "important *additional right* in the form of a pecuniary advantage [to] municipalities, schools and public utilities . . . but denied to the Territorial Government"; but that this "alleged special savings [*sic*] clause" should not protect the appellees from being held "personally liable for the unpaid taxes" for the earlier years.

In this connection, we may observe in passing that both parties repeatedly refer in their briefs to "savings" clauses—the appellant 44 times and the appellees 58 times. This palpable error, in which the Court below joined, and which, because of its frequency, can scarcely be regarded as typographical, occasionally is encountered even in some legal encyclopedias. For example, in 50 Am. Jur., Statutes, § 528, page 535, under the caption *"Express Savings Provisions in Repealing Statutes,"* we find the form "savings" and the form "saving" each used three times in the same paragraph, each time followed by the word "clause."

Since we are here dealing with statutory construction and not with bank accounts, "saving" is, of course, the precise word. See South Carolina v. Gaillard, 1880, 101 U.S. 433, 438; Bridges v. United States, 1953, 346 U.S. 209, 227, note 25; Bouvier, Third Revision, 1914, volume 2, page 3007; 82 C.J.S. Statutes § 440, pages 1014-1018; Webster's New Inter-

national Dictionary, Second Edition, Unabridged, 1955, page 2223, *sub verbis* "saving clause."

In his argument supporting the finespun thesis that the appellees owe these back taxes in the face of a plain and—as to them—unqualified repeal, able counsel for the appellant displays more agility than persuasiveness.

1. *Statement of the case.*

On February 21, 1949, the Territorial Legislature of Alaska enacted the first general "Property Tax Act" of the Territory, Chapter 10, Session Laws of Alaska, 1949, hereinafter sometimes referred to as Chapter 10. On March 12, 1953, the Property Tax Act was repealed by Chapter 22, Session Laws of Alaska, 1953, pages 73-74, which was passed over Governor Ernest Gruening's veto. Because of the crucial relevance of that repealing statute to the present lawsuit, we copy it below in full:

"To repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; *excepting from repeal certain taxes and tax exemptions;* and declaring an emergency.

"Be it enacted by the Legislature of the Territory of Alaska:

"Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.

"Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in subsection (a) of this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.

"Section 3. An emergency is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval." [Emphasis supplied.]

It may here be explained that Section 6(h) of Chapter 10, *supra*, refers to "incentive exemptions" that the Tax Commissioner of Alaska was authorized to grant to "new industries," and is not relevant to the present controversy.

Between April and May of 1955, the appellant filed eight separate complaints against the appellees seeking to recover a total of more than $175,000 in taxes, interest and penalties for various years between 1949 and 1952, inclusive. The appellees point out that these suits "were all personal actions against the several [appellees] seeking to recover taxes on both real and personal property combined without any attempt at segregation of one type of property from the other."

Each appellee filed a separate and identical motion to dismiss, alleging that the complaint did not state a claim upon which relief could be granted, and that the action was not brought within the time required by law.

On May 5, 1955, the appellant filed a counter motion to strike against four of the appellees, requesting the Court below to strike the motion to dismiss. The Court denied the motion to strike and granted the appellees' motion to dismiss the eight complaints, for the reasons stated in the Court's opinion, which was filed on January 4, 1956. 137 F. Supp. 181.

On February 7, 1956, the appellant filed a notice of appeal from the order of the Court below dismissing the complaints. On November 14, 1956, we ordered that the appeal "be dismissed for want of jurisdiction because of the lack of final judgment," and we remanded the cases to the Court below.

On December 11, 1956, the District Court filed a final judgment decreeing (1) that the complaints alleging a personal liability be dismissed; (2) that the complaints and the "numbered causes be dismissed on the merits for the reasons stated in the Court's opinion of January 4, 1956," *supra;* and (3) that neither the taxes nor the remedy under Chapter 10 "survived the repeal found in Chapter 22 SLA 1953," etc.

On the same day, a second notice of appeal was filed in this case. It is this second appeal that is now before us.

Four questions are presented by the appellant:

(1) Whether the Property Tax Act is a tax on the appellees for which they are personally liable, or is merely a tax upon their property;

(2) Whether the appellant is without a remedy to collect and enforce taxes due under the Property Tax Act;

(3) Whether the language in Chapter 22, *supra*, repealing the Property Tax Act, is a "special saving clause" nullifying the appellant's right under the "Territorial *General* Saving Clause," *infra*, "to collect accrued and unpaid taxes for" 1949-1952.

(4) Whether, in interpreting Chapter 22, *supra*, the terms and expression of which are asserted to be ambiguous, "the Court is limited in ascertaining the legislative intent to only those statutory constructional aids of which it may take 'judicial notice' or whether it may refer to extrinsic aids, otherwise admissible under the laws of evidence, which bear directly on such intent."

In our view, Question No. 3 is determinative of the issue.

2. *Alaska's General Saving Statute*

Section 19-1-1, Alaska Compiled Laws Annotated, 1949, as amended by Chapter 4, Extraordinary Session Laws of Alaska, 1955, reads as follows:

> "*Effect of repeals or amendments.* The repeal or amendment of any statute shall not affect an offense committed or any act done or right accruing or accrued or any action or proceeding

had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. When any act repealing a former act, section or provision shall be itself repealed, such repeal shall not be construed to revive such former act, section, or provision, unless it shall be expressly so provided."

3. *The Saving Section of the Repealing Act Overrides the General Saving Statute.*

Section 2 of the Act of 1953, hereinafter the repealing act, must prevail over Section 19-1-1 of Alaska Compiled Statutes Annotated, hereinafter the general saving statute.

At the outset, we note that the very title of the repealing act underlines one of its main purposes; namely, that of *"excepting from repeal certain taxes and tax exemptions."*

In John J. Sesnon Co. v. United States, 9 Cir., 1910, 182 F. 573, 576, certiorari denied, 1911, 220 U.S. 609, a case that came to this Court from Alaska, Judge Morrow observed:

> "Where doubt exists as to the meaning of the statute, the title may be looked to for aid in its construction."

In the repealing statute before us, the participial phrase, "*excepting* from repeal" certain taxes, etc., without any qualification to the word "excepting," indicates that the term is to be taken in its ordinary restrictive sense.

Considering the repealing act as a whole, we should bear in mind that being a *special* or, in the words of the Supreme Court, a "*specific*" enactment, it qualifies and furnishes exceptions to the *general* repeal law of Alaska—Section 19-1-1, dealing with the "Effect of repeals or amendments," *supra.*

More than threescore and ten years ago, this rule was already "well settled" in Anglo-American law.

In Townsend v. Little, 1883, 109 U.S. 504, 512, the Court observed:

> "According to the well settled rule, that general and specific provisions, in apparent contradiction, whether in the same or different statutes and without regard to priority of enactment, may subsist together, *the specific qualifying and supplying exceptions to the general,* this provision for the execution of a *particular* class of deeds is *not* controlled by the law of the territory requiring deeds *generally* to be executed with two witnesses. [American and English authorities cited.]" [Emphasis supplied.]

The principle is merely a corollary of the familiar maxim, *Expressio unius est exclusio alterius,* as was pointed out in Rybolt v. Jarrett, 4 Cir., 1940, 112 F.2d 642, 645:

> "There is some force here in the maxim Expressio unius est exclusio alterius. When in a

statute of such clean cut restrictive force, the legislature undertook to make certain explicit exceptions, it seems a fair implication that the legislature intended to exclude other exceptions, and thus to make the statute say what it means and mean what it says."

Similarly, in Jones v. H.D. & J.K. Crosswell, 4 Cir., 1932, 60 F.2d 827, 828, it was said:

"Being exceptions carved out of the general rule, intangible property not *specifically* mentioned as being tangible property must be excluded. The maxim 'expressio unius est exclusio alterius' applies. *It is a well-settled principle of statutory construction that the expression of one thing excludes others not expressed.* [Many cases cited]" [Emphasis supplied.]

The principle is well established in California. In Los Angeles Brewing Company v. City of Los Angeles, 1935, 8 C.A. 2d, 391, 398, cited in the *Stanford Law Review* of January, 1949, Volume 1, Number 2, Page 371, Note 2, the Court remarked:

"As section 22 of Article XX [of the Constitution of California] *was adopted last, as it is special in dealing with this subject of the control, licensing and regulating of 'the manufacture, sale, purchase, possession, transportation and disposition of intoxicating liquor within the state'* and as it shows an intention to remove the licensing for revenue of those so dealing in intoxicating liquors from the realm of a municipal affair to that of a matter of general state-wide concern, its provisions must be held to control over those of section 6 of article XI of the Constitution

[authorizing cities and towns to legislate "in respect to municipal affairs"] and vest in the state the exclusive and sole right to license for the purpose of revenue those engaged in the business of manufacturing, dealing in or handling intoxicating liquors." [Emphasis supplied.]

So far we have looked at the authorities dealing with the *general* application of the principle of "The expression of one is the exclusion of others." But there is a leading and oft-quoted decision that applies the venerable maxim to the precise question that we are here considering; namely, the conflict between a *general* repeal provision and a *special* repeal provision.

We refer to State v. Showers, 1885, 34 Kan. 269, 8 P. 474, 476-477, where the entire question was lucidly discussed:

"The offense of which the defendant was found guilty was committed in violation of section 7 of the prohibitory liquor law as enacted in 1881, and the prosecution for such offense was commenced and conducted to its final termination after said section had been amended and the original section repealed by an act taking effect March 10, 1885; and the first question presented to this court, . . . is whether the defendant could be punished for a violation of the old section when the prosecution had not been commenced until after it had been amended and repealed." [Page 475]

The general saving statute of Kansas at that time read in part as follows:

"The repeal of a statute does not revive a statute previously repealed, nor does such repeal effect any right which accrued, any duty imposed, any penalty incurred, nor any proceeding commenced under or by virtue of the statute repealed." (Compiled Laws, 1879, c. 104, § 1)

It will be observed that the above Kansas statute was closely similar in effect to the General Saving Act of Alaska, § 19-1-1, *supra*. On the other hand, § 19 of the repealing act of 1885, *supra*, contained the following special *saving* proviso:

"All prosecutions pending at the time of the taking effect of this act shall be continued the same as if this act had not been passed."

With this legislative and factual situation before it, the Supreme Court of Kansas said:

"The question as to what should be repealed and what saved was before the legislature. They had the entire subject-matter thereof under consideration, and evidently intended to cover the entire ground; and evidently intended that nothing should be repealed except what they expressly repealed, and that nothing should be saved except what they expressly stated should be saved. They expressly saved some things; therefore it must be inferred that they intended to save no others. *Expressio unius est exclusio alterius.* The legislature evidently intended that the special saving clause which they enacted in section 19 of the Act of 1885 should take the place of all others, so far as prosecutions under original section 7 were concerned; and *that in cases where the special saving clause could apply the general*

saving statute should have no operation. 'It is a well-settled rule of construction that specific provisions relating to a particular subject must govern in respect to that subject, as against general provisions in other parts of the law which might otherwise be broad enough to include it.' *Felt v. Felt,* 19 Wis. 196. 'It is familiar law that a later statute will operate as a repeal of a former, although it contains no express repeal, and even though its provisions are not absolutely repugnant to those of the former, whenever it is obvious that the one was intended as a substitute for the other.' [Cases cited.]

"If, however, the saving clause in section 19 of the act of 1885 was not intended by the legislature to cover the entire ground, and to be a substitute for the general saving statute so far as cases like this are concerned, then the saving clause contained in section 19 of the Act of 1885 has no office to perform, but is absolutely worthless, for the general saving clause would save all that it saves and very much more. Such an interpretation of the law as this would violate all proper canons of construction. It would in effect say that the legislature had done the very foolish thing of enacting a saving clause which can have no real operation at all, and can subserve no actual purpose whatever. 'It is a well-settled rule that when any statute is revised, or one act framed from another, some parts being omitted, the parts omitted are not to be revived by construction, but are to be considered as annulled. To hold otherwise would be to impute to the legislature gross carelessness or ignorance, which is altogether inadmissible.' *Ellis* v. *Paige,* 18 Mass. 45.'" [Emphasis supplied.]

Emphasizing that the *general* saving statute comes into play only where the repealing act is "silent as to whether the rights and remedies" under the old law are to be saved, the Supreme Court of Kansas said in conclusion:

> "The theory upon which it has been held by this court that the general saving statute is applicable in cases of repeals is that where the repealing statute is *silent* as to whether the rights and remedies which had previously accrued under the repealed statute should be saved or not, such silence indicates an intention on the part of the legislature that the general saving statute should be left to operate upon the repeal, and to save all such rights and remedies as come within the saving provisions of the general saving statute. [Cases cited.] In the present case, however, the repealing statute is not *silent*, for it itself contains a saving clause which shows that it was not the intention of the legislature to rely upon the general saving statute.
>
> "For the reasons above stated we think the present action cannot be maintained. The judgment of the court below will therefore be reversed and cause remanded for further proceedings.
>
> "(All the justices concurring.)" [Pages 477-478][1]

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[1]See also, on this question of the legislators' intention "that nothing should be saved except what they expressly stated should be saved", Wilmington Trust Co. v. United States, Del., 1928, 28 F.2d 205, 208; and on the general application of the "*expressio unius*" maxim, see also Ainsworth v. Bryant, 1949, 34 C.2d 465, 472, 473, 211 P.2d 564, 568; 50 Am. Jur. §528, page 535; 82 C.J.S. §440(a), page 1015.

Both on reason and authority, therefore, we hold that § 2 of Chapter 22 of 1953, the repealing statute, means precisely what it says; namely, that Chapter 10 of the Session Laws of Alaska, 1949, shall "be and it is hereby repealed," except "any taxes which have been levied and assessed by any municipality, school or public utility district," etc., including such taxes levied and assessed for the "current fiscal year"—taxes which are not in controversy here, and which alone are saved from repeal.

With the above exclusive exception, Chapter 10, Session Laws of Alaska, 1949, is no longer of any force or effect—as to past, present, or future years.

4. *The District Court Did Not Err in Excluding from Evidence H. B. No. 3 and S. B. No. 5.*

The appellant asserts that "Because of the ambiguity of the statute and the direct bearing on the legislative intent, the Court should have considered the bill originally introduced and the amendments thereto, which preceded the final adoption of Chapter 22, SLA 1953".

Specifically, the appellant urges as error the lower court's rejection of "both the original House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature".

The record shows that only House Bill No. 3 was offered in evidence. The appellant counters with the statements that Senate Bill No. 5 "was identical in all respects to House Bill No. 3"; that an authenticated copy was formally filed in the District Court

with the Territory's brief; and, "alternatively", that the Senate bill "could have been called to the Court's attention by citing page 32 of the 1949 Senate Journal (which is conceded by the appellees to be subject to judicial notice) wherein the word-for-word likeness of the *title* of Senate Bill No. 5 and House Bill No. 3 clearly indicates both bills to be indistinguishable in form, design or purpose".

We accept the appellant's "alternative" point at its face value, and hold that the title of the Senate bill and the House bill indicate that they are "indistinguishable". By a parity of reasoning, however, we also hold that the title of House Bill No. 3 as introduced and the title of the House bill as enacted "clearly indicate" their differences.

As originally introduced, the bill, according to its title, was offered for the purpose of "abrogating and repealing all accrued and unpaid taxes levied thereunder"; while the Act as passed carried a title showing that the new statute was "excepting from repeal certain taxes and tax exemptions". The extract from the Senate Journal printed in the appendix to the appellant's opening brief in this Court also shows that a "new Section 2" dealing with taxes levied "by any municipality, school or public utility district", etc., *supra*, was added by the Senate, and was concurred in by the House.

These changes in the House bill before its final enactment, however, are not relevant here.

In Trailmobile Co. v. Whirls, 1947, 331 U.S. 40, 60-61, the Supreme Court thus disposed of attempts

to interpret statutes by minutely tracing "legislative maneuvers":

> "These reasons, founded in the literal construction of the statute and the policy clearly evident on its face, are sufficient for disposition of the case. They are not weakened by the Government's strained and unconvincing citation of the Act's legislative history.
>
> "That argument is grounded in conclusions drawn from changes made without explanation in committee [as in the statute before us] with respect to various provisions finally taking form in §8, changes affecting bills which eventually became the Selective Training Service Act and the National Guard Act, 54 Stat. 858. Apart from the inconclusive character of the history, the Government's contention assumes that the only alternatives presented by the final form of the bill were indefinite duration for the incidents of the employment named and none at all. This ignores the other possibilities considered in this opinion, including duration for a reasonable time. Moreover, as has been noted, *the most important committee changes relied upon were made without explanation. The interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers.*" [Emphasis supplied.]

We hold that the trial court did not commit prejudicial error in excluding evidence of the original House Bill No. 3 and the amendments thereto.

From the foregoing, it will be seen that, since the limited saving clause did not preserve enough of the repealed tax statutes to be applicable against the tax-

payers who are the appellants here, they are not liable either *in rem* or *in personam*. Any discussion, therefore, of the *personal* liability of the appellants, as contradistinguished from the *in rem* liability of their property, would be moot.

In our view, the appellants are not liable either *in rem* or *in personam*, since the repealing act, as has been shown, completely wiped out *any* tax liability except as to municipal, school, or public utility district taxes, which are concededly not involved in the instant case.

5. *Conclusion*

Accordingly, it is the holding of this Court that the saving section of the repealing act relating to the Alaska Property Tax Law overrides the general saving statute; and that the Court below did not err in excluding from evidence House Bill No. 3 and Senate Bill No. 5.

The judgment of the District Court is therefore

Affirmed.

HEALY, Circuit Judge, Dissenting

I disagree with the holding of the majority that section 2(a) of chapter 22, Alaska Session Laws of 1953, nullifies the effect here of the Alaska General Savings Statute, section 19-1-1, Alaska Compiled Laws 1949. The relevant provisions of the latter are quoted below.[1] It is not at all clear that it was the

[1] "*Effect of repeals or amendments.* The repeal or amendment of any statute shall not affect an offense committed or any act done

legislative intent to wipe out the liability of those in the situation of appellees for unpaid taxes levied for the years 1949 through 1952, but rather that section 2(a) had another and different purpose.

Significantly, the history of the 1953 legislation shows that section 2 of the original bill was deleted in the course of the bill's consideration. That section in unmistakable terms had forgiven and abrogated all pre-1953 taxes. Concurrently, the phrase "and abrogating and repealing all accrued and unpaid taxes levied thereunder" was deleted from the bill's title. Thus the legislature had before it in the original bill clear language which would have forgiven the taxes here in question. It chose, instead, to reject the language.

In material part section 2(a) of the Act as finally passed reads:

> "Section 2. Section 1 of this Act shall not be applicable to: (a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; . . ."

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or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. . . ."

In light of what has been said above, the section is fairly construable as intending no more than a grant to the municipalities and school and public utility districts—but not to the Territory itself—of the right to levy and collect taxes for the then current year, namely 1953, both before and after the repealing act had taken effect. There was a logical reason for granting this right to these local districts in that the legislature may well have felt it undesirable to interfere with their current fiscal programs, whether or not the levies for that year had yet been made. As so construed, section 2(a) is readable in pari materia with the General Savings Statute, above quoted, as not interfering with the collection of unpaid 1949-1952 taxes, either of the Territory or of the taxing districts.

As was recognized by the trial judge but is not mentioned in the majority opinion here, it is a fundamental rule of statutory construction that general savings clauses or statutes preserve rights and liabilities which have accrued under an act repealed, and that they operate to make applicable in designated situations the law as it existed before the repeal, *unless such application is negatived by the express terms or clear implication of a particular repealing act.*

My brothers, as I understand them, do not contend that such application is negatived by the express terms of the 1953 legislation, but rather is to be gathered by implication. To me, however, the legislation in the respects here in question is fundamentally ambiguous, both in its meaning and in the motives

inspiring its enactment. Accordingly I dissent from the majority holding.

(Endorsed:) Opinion. Filed June 27, 1957.
Paul P. O'Brien, Clerk.

Appendix B(1)

United States Court of Appeals for the Ninth Circuit

No. 15,070

TERRITORY OF ALASKA,
Appellant,

vs.

AMERICAN CAN COMPANY, FIDALGO ISLAND PACKING COMPANY, LIBBY, MCNEILL & LIBBY, INC., NAKAT PACKING COMPANY, NEW ENGLAND FISH CO., P. E. HARRIS COMPANY, INC., PACIFIC & ARCTIC RAILWAY & NAVIGATION CO., and OCEANIC FISHERIES CO.,
Appellees.

JUDGMENT

Appeal from the District Court for the District of Alaska, Division Number One.

This cause came on to be heard from the District Court for the District of Alaska, Division Number One, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Order of the

said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment

Filed and entered: June 27, 1957

Paul P. O'Brien, Clerk.